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UNCLAS SECTION 01 OF 05 COLOMBO 000795

SIPDIS

STATE FOR SCA/INS, SCA/RA, AND EEB/MTAA HHELM  
STATE PLS PASS TO USTR MARIDETH SANDLER AND VICKY KADER

E.O. 12958: N/A

TAGS: [CE](#) [ECON](#) [ELAB](#) [ETRD](#)

SUBJECT: SRI LANKA: REVIEW OF LABOR STANDARDS

REF: A. 08 COLOMBO 1073

[1](#)B. 09 COLOMBO 259

[1](#)1. (SBU) Summary: On June 24, the AFL-CIO submitted a petition to the Generalized System of Preferences (GSP) subcommittee alleging that the Government of Sri Lanka (GSL) was not taking steps to afford internationally recognized workers, rights. In order to assess the current situation, EconOff met with representatives from the private and public sectors to ascertain the status of workers, rights in the country, and to determine the accuracy of the petition. While the trade unions that signed the GSP petition do raise valid points, Post,s assessment is that progress is being made, and the GSP petition should not be accepted. End Summary.

[1](#)2. (U) On June 24, the AFL-CIO submitted a petition to the Generalized System of Preferences (GSP) subcommittee alleging that the Government of Sri Lanka (GSL) was not taking steps to afford internationally recognized workers, rights and requested that Sri Lanka be removed from the list of GSP eligible countries. In order to assess the current situation, EconOff met with representatives from the private and public sectors to ascertain the status of workers, rights in the country, and to determine the accuracy of the petition.

Labor in Sri Lanka ) Background

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[1](#)3. (U) Sri Lanka is a member of the International Labor Organization (ILO) and has ratified 31 international labor conventions including all eight core labor conventions. The labor laws in Sri Lanka are laid out in almost 50 different statutes. The country has a labor force of approximately 7.7 million, of which 7.2 million are employed. The private sector workforce is estimated to be 3 million with an additional 2 million people classified as self-employed. The public sector employs over 1 million people. The remainder of the work force consists of migrant workers working abroad.

[1](#)4. (U) There are more than 1900 registered trade unions and 24 federations in Sri Lanka. The ILO works with a group of 17 major trade unions that it considers representative of the unions in the country. Four of the seventeen were signatories to the GSP petition. Eight trade unions in total signed the petition. Of these three are private sector unions and five are public sector. The Export Processing

Zones (EPZs), which employ 117,000, or 1.7 percent, of the working population, are represented by 11 trade unions, 156 Employee Councils and 31 Workers Councils. Sri Lanka has 12 export processing zones (EPZ) that are populated by 259 companies. 10 percent of the EPZ workers are members of a trade union.

#### GSP Petition, Fact or Fiction?

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15. (SBU) Many discussions were conducted with industry, government, and NGO representatives to investigate the veracity of the issues detailed in the petition (Ref A and B). Almost all agree that workers, rights in Sri Lanka can be strengthened in order to be gauged as fully effective. Everyone also agreed that workers, rights regulations and labor conditions in Sri Lanka were the most advanced in the South Asia region. The principal area of disagreement was in how the remaining issues should be addressed and whether the government was doing an adequate job of addressing them.

16. (SBU) Leslie Devendra, Secretary General of the Sri Lanka Nidahas Sewaka Sangamaya Union (SLNSS), one of the largest unions in the country, said that the petition was not formulated in consultation with his, or most of the other major trade unions in Sri Lanka. According to him, the signatories to the petition had an agenda other than workers, rights.

17. (SBU) Anton Marcus, head of the Free Trade Zones and General Services Employees Union (FTZ & GSE), had a very

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different take on the state of workers, rights in Sri Lanka.

Marcus is one of the primary backers of the petition; however he does not want GSP benefits to be removed. Rather, he is using the petition as a way to bring attention to the problems of workers. Marcus feels that this is the only way to force the government to listen to their concerns. He claims that all other approaches have been ignored.

#### Abiding Mistrust of Unions

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18. (SBU) Approximately 20 percent of the workforce in Sri Lanka is unionized; however, union membership is declining. Most of the major trade unions are affiliated with political parties. As a result, trade union activity has sometimes been linked to political issues without any clear labor demands. There is a perception among workers that trade unions have agendas beyond supporting workers, rights. During a meeting with the Workers Council of the North Sails company, EconOff was told that the trade unions were a (quote) destructive social force (end quote) and that they did not have workers, interests in mind. Most of the workers EconOff spoke with preferred working with the employee and workers, councils rather than trade unions. They saw the councils as a way to work hand in hand with management, while unions were seen as confrontational and unproductive.

19. (SBU) The lack of access to workers in the EPZs has been a major issue for trade union leaders. In order to gain entry to an EPZ, approval from the Board of Investment (BOI) is required in advance. The BOI said that it would grant such access if the purpose of the visit was not (quote) destructive (end quote). Officials reiterated that, if employees wanted to form a union, they would not get in the way.

110. (SBU) EconOff talked in detail with trade union leaders on both sides of the debate over conditions in the EPZs. According to Anton Marcus, the majority of the labor problems occur within the EPZs. The employees work overtime without additional pay, many of the women were malnourished, and owners were using the economic crisis as an excuse to fire workers or reduce wages. Anton said that because access to

the workers in the EPZs is difficult, union representation are not able to address the problems. According to Sri Lankan law, a union is authorized to bargain on behalf of its members when it has a membership of at least 40 percent of the workers. Marcus claimed that the GSL and factory owners were doing everything possible to prevent unions from organizing ) union leaders were being intimidated and refused access to the workers; the government was taking too long to hold a referendum that would show the union had 40 percent representation.

¶11. (SBU) SLNSS Secretary General Devendra said that the problem was not entirely access to the EPZs or even conditions in the EPZs, though it was an issue. According to Devendra, the issue of trade unions within the zones was more of an administrative one. Most workers in the EPZs don't have an abiding interest in the factories; they stay for five years in order to receive a bonus and then leave. The high rate of turnover makes it difficult for unions to reach the 40 percent representation needed to bargain on behalf of the workers. He said that the 11 unions operating in the EPZs did not have any major issues in representing the workers and that people like Anton Marcus had difficulties because they were suspected of having agendas outside of the labor area.

#### Forty Percent Representation Requirement a Matter of Debate

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¶12. (SBU) One of the biggest areas of contention in the labor debate is section 32A(g) of the Industrial Disputes Act of 1999 which states that no employer shall refuse to bargain with a trade union which has in its membership not less than 40 percent of the workers on whose behalf the trade union seeks to bargain. Anton Marcus and Palitha Atukrale, President of the Progress Union, both say that this percentage requirement is too high and makes it difficult for

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trade unions to be established in the EPZs. Leslie Devendra, Secretary General of SLNSS, thinks that the 40 percent requirement is appropriate and that the percentage could be even higher. In his view, having less than 40 percent membership makes it difficult for the union to claim that it represents the workers as a whole.

¶13. (SBU) All the trade unions expressed frustration with the amount of time taken by the Ministry of Labor to recognize a union after the 40 percent representation level is reached. Even the Employers Federation of Ceylon (EFC) which represents owners agreed that it was an issue. Employers have the right to ask the Ministry of Labor to conduct a referendum confirming the required level. Unions feel that it takes the Ministry too long to conduct the referendum. They say that the process can take up to a year. This makes it difficult for union leaders to keep workers together. The Ministry of Labor disagreed with this contention. W.J.L.U. Wijayaweera, Commissioner General of Labor, said that referenda normally take place within three to four months of the request being filed.

¶14. (SBU) It was emphasized by both the Ministry of Labor and the Employers Federation of Ceylon (EFC) that the 40 percent requirement only applied to a union's right to bargain collectively on behalf of the workers. Any size group can declare themselves a union and engage in talks with employers and talk about individual issues; they just cannot represent the entire workforce to bargain collectively on their behalf.

#### Public Sector Representation

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¶15. (SBU) Government workers are not allowed to join confederations of their own choosing, including organizations of workers in the private sector. The GSP petition further asserts that five categories of public sector employees are

not allowed the freedom to associate. Mahinda Madihahewa, Secretary of the Ministry of Labor Relations, promised that these statutes will be reviewed by the National Labor Advisory Commission (NLAC).

#### The Role of the Government

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¶16. (SBU) The primary reason AFL-CIO was asked to file the petition was the perception by the signatory trade unions that the Government of Sri Lanka was not addressing their issues. The Progress Union, FTGSE, and the Solidarity Center all believe that the government does not want to see the Freedom of Association and Collective Bargaining agreements enforced. They think that the Rs 20, 000 (approximately USD 187) fine for violations of the Industrial Disputes Act is too low. Union leaders also complain about the lack of action on workers dispute cases. They say there are too many loopholes in the laws that are supposed to protect workers, and that the laws themselves are not strictly enforced.

¶17. (SBU) EconOff raised these issues with representatives of the Ministry of Labor. Ministry officials expressed frustration at the complaints, saying that all of the issues were being dealt with. They also asked why the unions had not come directly to them with their complaints rather than going to the United States and the ILO. When told that the union leaders felt they had no other option but to seek outside aid, Mahinda Madihahewa, Secretary of the Ministry of Labor, said that this was not the case. Union leaders were free to attend the NLAC meetings held once a month; In addition, the Ministry set up 20 Provincial Labor Advisory Councils in 2007 so that workers did not have to come to Colombo to file complaints. The Ministry is also starting a program for public sector dispute settlement that will first be launched in the Ministry of Transport.

¶18. (SBU) The Ministry also took issue with the allegation that the courts were not hearing unfair labor practices cases. They said that, often, the trade unions do not come forward with evidence to support the dispute. The Ministry

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did mention that the fine for unfair labor practices was being increased to Rs 100,000 (approximately USD 892).

¶19. (SBU) EconOff raised the issue of the individual cases cited in the petition with the Ministry. Officials offered to go through each case and provide a status update. They said that most of the cases were in the court system awaiting resolution. The responses mirrored those given to AUSTR Delaney during his meeting in November and February (Ref A and B).

#### What Does the ILO Think?

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¶20. (SBU) The regional office of the ILO was not consulted on the GSP petition prior to its submission. The regional office meets with the major trade unions every six months. Tine Staermose, director of the regional ILO office, thought that Sri Lanka was working towards affording internationally recognized workers rights and felt that the petition did not reflect the realities on the ground.

¶21. (U) ILO activities in Sri Lanka are guided by the Decent Work Country Program (DWCP). The goal of DWCP is to make decent work a central objective of national development policies and strategies. Sri Lanka was the first South Asian country to develop a National Plan of Action for Decent Work. This plan is augmented by the National Framework for Social Dialogue, a framework that identifies the role of the Government, employers, and workers in the DWCP. The Framework was signed by nine trade unions.

¶22. (SBU) The issue of labor rights in Sri Lanka is a complex one. It cannot be denied that there are shortcomings in both how the labor laws are written and how they are enforced. However, this is not the standard set by the GSP statute, which requires that, in order to be eligible for GSP status, a country (begin quote) must have taken or is taking steps to afford workers in that country internationally recognized worker rights.(end quote) By that measure, it is possible to unequivocally say that Sri Lanka is meeting the requirements under the statute. The regional ILO office concurs with this assessment. Most of the major trade unions in the country also agree with this assessment. Post recommends that the GSP petition should not be accepted.

¶23. (SBU) The trade unions that signed the GSP petition do raise valid points. The court system is slow and cumbersome. The Ministry of Labor does not have the full capacity to settle employee-employer disputes. It takes too long for trade unions to be officially recognized, especially in the EPZs. The Ministry of Labor should do more inspections of factories and respond to trade union demands on a timely basis. But progress is being made. The NLAC met last week to discuss the issue of allowing public workers to federate with or join private sector unions. The Ministry of Labor is drafting a law that would create a government unemployment benefit scheme, the first of its kind in the country and in the region.

¶24. (SBU) The incidents cited in the GSP petition are not representative of the actual labor conditions in Sri Lanka. EconOff, during the course of many meetings, found a vibrant and active discussion on the state of workers, rights in the country. Strikes and other trade union actions are not uncommon. On July 7, doctors attached to state hospitals staged a one day strike which was settled after intervention by the President.

¶25. (SBU) Labor rights and workers conditions in Sri Lanka are important issues that merit further discussion and advocacy. It should be on the agenda of the upcoming Trade and Investment Framework Agreement (TIFA) talks. Post will continue to dialogue with all of the relevant parties in country and encourage action. Efforts should be made to

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bring all sides of the discussion to the table so that issues can be addressed at the proper level. All parties have expressed a willingness to do so.  
MOORE